

Message Text

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ACTION SCS-03

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FM AMCONSUL HONG KONG

TO DEPARTMENT OF JUSTICE

INFO SECSTATE WASHDC 5491

SECDEF

US ARMY CID COM

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FOR CHASE, DIRECTOR, OFFICE OF SPECIAL CONSULAR SERVICES

JUSTICE FOR RISTAU, CHIEF, FOREIGN LIGATION UNIT
CIVIL DIV., ONLY

SECDEF FOR PDASD (C), CDR. KELLY, ONLY

COMUSACID C FOR CIOP-FR, MR. SKETO, ONLY

DEPT. FOR SCS AND EA ONLY

E.O. 11652: N/A

SUBJ: CGEN (U.S. V. SIMMONS)

REF: STATE 130188

1. THE QUESTIONS RAISED IN PARAGRAPH SIX OF REFTEL ARE
ANSWERED IN THE ORDER RAISED:

A. JUDGE LEONARD DISCHARGED THE INJUNCTION AGAINST THE
WONGS ON APRIL 11, 1975, BECAUSE THE EVIDENCE SHOWED
THAT MOST OF THE FUNDS PASSED THROUGH THEM TO OTHER
DEFENDANTS. IT HAS SINCE BEEN FOUND THAT SOME FUNDS
REMAINING WITH THE WONGS HAVE BEEN SUFFICIENTLY
COMINGLED AS TO LOSE THEIR SEPARATE IDENTITY. FUNDS
CAN BE FROZEN UNDER LOCAL LAW ONLY WHEN THEY CAN BE
SHOWN TO BELONG TO THE PLAINTIFF WITHOUT ANY DOUBT OF
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THEIR HAVING COME FROM OTHER SOURCES AND WHEN THEY ARE

PROVEN TO BE IN THE CONTROL OF THE SPECIFIC DEFENDANTS.

B. A LIS PENDENS AGAINST SIMMONS'S APARTMENT COULD NOT BE FILED UNTIL THE ORIGINAL WRIT WAS AMENDED TO MAKE IT A SPECIFIC PART OF THE ACTION AND THE AMENDMENT WAS PERMITTED BY THE REGISTRAR. THE APPLICATION TO AMEND IS SCHEDULED TO BE HEARD ON 11 JUNE AND CONSEL ANTICIPATE REGISTRATION OF LIS PENDENS SHORTLY THEREAFTER. THERE IS NO PROCEDURE UNDER LOCAL LAW TO SEQUESTER OR ATTACH THE OTHER PROPERTY LISTED. FURTHERMORE, THERE IS INSUFFICIENT EVIDENCE, EXCEPT AS TO SIMMONS' CARS, TO SATISFY LOCAL REQUIREMENTS TO OBTAIN INJUNCTIONS PROHIBITING THEIR TRANSFER, AS THE NECESSARY AUDIT TRIALS HAS GAPS IN EACH CASE. IN REGARD TO SIMMONS' CARS COUNSEL INTEND TO SEND THE COMMISSIONER OF TRANSPORT A COPY OF THE AMENDED WRIT WITH A LETTER REQUESTING THAT HE NOT TRANSFER TITLE WITHOUT NOTIFYING THEM AND GIVING THEM TIME TO APPLY FOR A COURT ORDER. THE AIRCRAFT PRESENTED A DIFFERENT SITUATION IN THAT THE COURT ORDER PROHIBITING ITS OPERATION COULD BE SERVED ON THE DIRECTOR OF CIVIL AVIATION, THEREBY HINDERING ITS TRANSFER AS WELL AS ITS OPERATION.

C. INSTITUTION OF A GENERAL CIVIL ACTION AGAINST SIMMONS IN THE U.S. WOULD PROBABLY RESULT IN A STAY OF THE PROCEEDINGS IN HONG KONG IN REGARD TO SIMMONS; THE ACTION WOULD PROCEED IN REGARD TO THE OTHER DEFENDANTS. IF A CIVIL ACTION IN THE U.S. WERE LIMITED TO COLLECTION OF ANY ASSETS ACTUALLY IN THE U.S., THERE WOULD BE NO EFFECT ON THE HONG KONG ACTION.

D. AN INDICTMENT AND CRIMINAL PROSECUTION OF SIMMONS IN THE U. S. SHOULD HAVE NO EFFECT ON THE HONG KONG CIVIL ACTION.

E. NO DATE HAS BEEN SET FOR THE HEARING OF THE APPEAL, THE EARLIEST DATE OPEN ON THE CALENDAR AT THIS TIME IS 26 JUNE IF THE HEARING IS TO TAKE NO MORE THAN ONE DAY. IF COUNSEL DETERMINE THAT MORE THAN ONE DAY IS REQUIRED THE HEARING COULD NOT BE HELD THAT SOON. IT IS EXPECTED THAT DECISION WILL BE HANDED DOWN APPROXIMATELY TWO WEEKS AFTER LIMITED OFFICIAL USE

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THE HEARING. FILING OF THE APPEAL HAS NOT IMPEDED PROSECUTION OF THE ACTION. IF THE COURT RULES FOR APPELLANTS, USG CONSEL WILL REQUEST THE INJUNCTION BE CONTINUED UNTIL COUNSEL CAN MAKE INTER PARTIES APPLICATION TO JOIN PAN ASIA AND SERVAL.

F. THE DETAILED STATEMENT OF CLAIM WILL BE COMPLETED THE WEEK OF 23 JUNE. USG COUNSEL ARE CONCERNED ABOUT AN ATTACK ALLEGING THAT THE FUNDS IN QUESTION BECAME

THE PROPERTY OF THE VIETNAMES GOVERNMENT WHEN SENT TO THE NATIONAL BANK OF VIETNAM. THEREFORE, IT IS REQUESTED THAT DOJ FORWARD COPIES OF APPROPRIATE AUTHORIZATION AND APPROPRIATION ACTS AS WELL AS ANY OTHER AVAILABLE DOCUMENTS AFFECTING CONDITIONS OF AID TO RVN. IT WOULD ASSIST USG CASE IF AID WAS TO BE PROVIDED IN FORM OF GOODS (I.E. PETROLEUM) RATHER THAN MONEY. COUNSEL ALSO REQUEST THAT THEY BE PROVIDED DOJ OPINION WHETHER ACTUAL FUNDS WERE CONSIDERED TO HAVE REMAINED IN U.S. FROM TIME CHECKS WERE WRITTEN UNTIL ACTUAL DISBURSEMENTS WERE MADE TO SUPPLIERS ACCOUNTS; U.S. CASE MAY BE WEAKENED IF THEY WERE CONVERTED TO PIASTERS AND THEN RECONVERTED TO DOLLARS.

3. MR. STEVENSON DEPARTED HONG KONG ON 30 MAY FOR A SIX WEEK VACATION IN THE UNITED KINGDOM. HE TURNED THE USG CASE OVER TO MR. ROBIN PEARD OF THE SAME FIRM WHO PROVIDED THE INFORMATION IN THE PARAGRAPH ONE ABOVE.

4. HANG SENG BANK, LTD., HAS ADVISED THAT NO DEFENDANT (EXCEPT WONG'S INTERNATIONAL) HAS AN ACCOUNT WITH THEM AND HAVE SUGGESTED ACTION BE DISCONTINUED AGAINST THEM PROVIDING THEY SUPPLY INFORMATION AS TO WONG'S INTERNATIONAL ACCOUNT. COUNSEL REQUESTED VERIFICATION THAT THIS STATEMENT INCLUDED PAN-ASIA AND SERVAL; ASSUMING IT DOES, COUNSEL RECOMMENDS DISCONTINUANCE AGAINST HANG SENG WITH UNDERTAKING BY THEM TO SUPPLY ALL AVAILABLE INFORMATION ON WONG'S ACCOUNT. PLEASE ADVISE IF SUCH ACTION IS APPROVED OR DISAPPROVED.
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